

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1178 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CORONATION FLOUR MILLS

Versus

UNION OF INDIA & ORS.

Appearance:

MR MC BHATT for Petitioner

None present for Respondent No. 1

MR DM THAKKAR for Respondent No.2 to 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/03/97

ORAL JUDGMENT

The petitioner, a partnership firm, filed this Special Civil Application and it has been prayed that by issuing a writ in the nature of Mandamus and/or any other appropriate writ, direction or order, holding and declaring that the petitioner is entitled to take delivery of its quota of wheat at Kanakaria Goods Yard without being obliged to pay freight or forwarding

charges between Kaligam and Kanakaria and in the alternative prayer has been made to hold and declare that the second part of clause (c) of Circular at annexure 'A' is discriminatory and therefore, violative of Article 14 of the Constitution and be pleased to quash and set aside the same. Further prayer has been made that the respondents No.2 to 4 be directed to reimburse to the petitioner with the freight and forwarding charges incurred by it in respect of transportation of its quota of wheat from Kaligam to Vatva, both in respect of the past claims as well as those that may arise in this connection in future.

2. The learned counsel for the petitioner does not dispute that the wheat quota has been lifted by the petitioner from the godown of respondents No.2 to 4 at Kaligam during the period which ended in the year 1980. This writ petition has been filed by the petitioner in this Court on 27th February 1984, i.e. after more than four years of the last quota of wheat lifted by the petitioner from the depot of respondents No.2 to 4 at Kaligam. The petitioner has taken all the benefits of lifting of quota of wheat which was at the relevant time essential control commodity and it has taken all the benefits and then after four years of the last quota was lifted, filed this petition, praying therein for reimbursement of freight and forwarding charges incurred by it in respect of transportation of quota of wheat from Kaligam to Vatva. So far as the future claim is concerned, nothing has been pleaded by the counsel for petitioner.

3. This writ petition deserves to be dismissed only on the ground of delay and laches. The petitioner, at no point of time, has raised any such objection with respondents No.2 to 4 or respondent No.1 Not only this, the petitioner has lifted the quota of wheat from Kaligam without any protest or objection. Once the petitioner has taken the benefit of circular, annexure 'A' for complete period, then after a four years, it cannot be permitted to challenge the clause of the very circular. Otherwise also, this writ petition deserves to be dismissed only on the ground that the petitioner is now estopped from raising all these objections as well as to raise claim of reimbursement of freight and forwarding charged incurred by it in respect of transportation of its quota of wheat from Kaligam to Vatva in respect of past claim. Not only this, even the petitioner has not given out the details of its claim.

4. Yet there is another ground on which this

petition deserves to be dismissed. The claim of the nature which has been made by petitioner is based on disputed question of facts and proper and effective remedy could have been by way of filing civil suit. It is not in dispute that the petitioner has filed Civil Suit No.1724 of 1979 in the City Civil Court at Ahmedabad against respondent No.2 for obtaining the relief as regards reimbursement of cartage, freight and forwarding expenses. The said suit was pending when this Special Civil Application was filed. The petitioner has stated that it feels that the City Civil Court at Ahmedabad does not have any jurisdiction to go in to the constitutionality of the circular, neither does it have jurisdiction to declare relevant portion of annexure 'A' unconstitutional. It is not the case of the petitioner that this issue has been decided by the City Civil Court. That is only feeling of the petitioner. However the suit was pending and still it is pending as it is not the case of the petitioner that it has been withdrawn or the prayer to the extent aforesaid has been deleted by amending the Plaint. Over and above, the petitioner has not disclosed to this Court, what ultimately resulted in the Civil Suit which has been filed in the year 1979. The petitioner has availed remedy of suit and the same was pending. It is a settled law that if an available remedy is availed of and the same is pending, then at the same time, a writ petition filed before this Court is not maintainable, and if any reference is required, then it may have to the decision of the Hon'ble Supreme Court in the case of Bombay Metropolitan Region Development Authority, Bombay, v. Gokak Patel Volkart Ltd. & Ors. reported in JT 1995(1) SC 155. This writ petition is wholly misconceived and the same deserves to be dismissed.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.2,000/- by way of costs of this petition to respondent No.2.

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